THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P.NOS.1396, 1825, 1826, 1864 AND 3557 OF 2002

COMMON ORDER

Heard both the counsel.

2. As the revisions arise out of the interlocutory orders passed in the suit in O.S.No.221 of 2002 on the file of Senior Civil Judge, Nizamabad and as they are connected and parties are common, they are being disposed of by this common order.

3. In all the revisions except in C.R.P.No.3557/2002, the plaintiff is the petitioner and in C.R.P.No.3557 of 2002, the 1st defendant in the suit, is the revision petitioner.

4. C.R.P.No.1396 of 2009 is filed to set aside the order and decree of the trial court dated 16.3.2009 in I.A.No.157/2009 in refusing to set aside the order dated 16.2.2009, whereby the evidence of P.W.1 was eschewed, as he was not ready to be cross-examined.

5. C.R.P.No.1825 of 2009 is filed to aside the order of the court below dated 19.2.2009 in dismissing the I.A.No.106/2008 filed by the plaintiff under Order 17, Rule 6 read with Section 151 C.P.C. to issue summons to respondents 1 to 4, 6 and 8 to 12 to produce the document for the purpose of comparison of his thumb impression and signatures with his admitted signatures.

6. C.R.P.No.1826 of 2009 is filed against the order of the court below dated 18.6.2008 in I.A.No.1268 of 2007 in dismissing the petition filed by the plaintiff under Rule 129 of Civil Rules of Practice and Section 151 C.P.C. to direct the Sub-Registrar, Nizmabad to produce the gift deed document no.1146 of 1997 dated 27.3.1979.

7. C.R.P.No.1864 of 2009 is filed against the order and decree dated 19.2.2009 passed by the court below in I.A.No.21/2009 in dismissing the petition filed by the plaintiff under Rule 129 of Civil Rules of Practice and Section 151 of C.P.C. to send the original relevant register of thumb impression and signatures of document no.1149/1997 dated 27.3.1997 to handwriting and finger print expert for comparison.

8. C.R.P.No.3557 of 2009 is filed by the 1st defendant in the suit against the order dated 28.1.2009 passed in I.A.No.743/2008 in dismissing the petition filed by the 1st defendant in the suit under Order 9 Rule 7 of C.P.C. to set aside the ex parte order dated 17.12.2003 passed against her.

9. The plaintiff filed the suit for declaration of title, recovery of possession, cancellation of registered sale deeds and for future mesne profits. From the material available on record and from the impugned orders it could be seen that the suit is filed in the year 2002 and the plaintiff filed chief affidavit on 5.11.2007 i.e, after a period of about five years. Thereafter the matter underwent several adjournments and as he was not present on 16.11.2007, his evidence in chief, was eschewed. He filed a petition to set aside the order dated 16.11.2007 and it was allowed and again the matter is coming up for the cross-examination of P.W.1. Again, he did not subject

himself for cross-examination in spite of several adjournments. Hence, by order dated 16.2.2009 his evidence was eschewed. Again he filed the present petition to set aside the order dated 16.2.2009. As already noted, the suit is of the year 2002 and the court below found that the petitioner filed number of I.As. and in the present case the contention of the petitioner is that in another I.A.No.106/2008 filed by him, it was recorded that petitioner was present in person and submitted his arguments. Therefore, when the petitioner was present on 16.2.2009 and is evident from docket proceedings in I.A.No.106/2008, eschewing his evidence on the same day on the ground that he is absent and requested time, is a mistake and hence order needs to be recalled. It is to be noticed that the evidence of the petitioner as P.W.1 was eschewed as he did not subject himself to cross-examination and time was sought. Therefore, the court below right dismissed the petition, as the petitioner did not evince any interest in prosecuting the suit.

10. In I.A.No.106/2008, the plaintiff sought to issue summons to respondents 1 to 4, 6 and 8 to 12 to produce the registered gift deed document no.1149/1997 dated 27.3.1997. From the material on record and from the impugned order it could be seen that the plaintiff earlier filed I.A.No.650/2006 to summon the respondent no.7 to produce the said document. By order dated 14.9.2007 the said I.A. was dismissed. Again the plaintiff filed the present I.A. to summon other respondents to produce the registered gift deed. In the impugned order the court has noted the dates on which the present petition and the earlier I.A.No.650/2006 was filed. Though the suit is filed in the year 2002, the present petitions are filed by the plaintiff in the year 2008 leisurely taking his own time and without evincing any

interest and the earlier petition filed by him in I.A.No.650/2006 was dismissed by a detailed order, holding that the 7th respondent was not having the document. Even in the present I.A., the plaintiff is not specific in whose possession the said document is and taking a vague plea, he is seeking to summon the document and the court below rightly dismissed the petition and the same does not warrant any interference.

11. I.A.No.1268/2007 is filed by the plaintiff to direct the Sub-registrar, Nizamabad to produce the gift deed document no.1146 of 1997 dated 27.3.1979. As could be seen from the material on record, there is nothing on record to suggest that the petitioner has made any efforts to obtain certified copy. As noted by the court below, producing the register pertaining to gift deed and other documents is a cumbersome procedure and the petitioner though filed the suit in the year 2002, filed the present petition in the year 2007 i.e., after a period of about five years and he is also not definite in whose possession the original gift deed is for the purpose of comparison. In these circumstances, the court below rightly dismissed the petition and the impugned order does not warrant any interference.

12. I.A.No.21 of 2009 is filed to send the original relevant register of thumb impression and signatures of document no.1149/1997 dated 27.3.1997 to hand writing and finger print expert for comparison. As already noted, the petitioner is not definite in whose possession the original gift deed is and it is not traced out and in these circumstances, question of comparison of admitted signatures with his alleged signatures on the original gift deed on the will and thus thumb impressions, does not arise. Therefore, the court below rightly dismissed the petition and the same does not warrant any

interference.

13. From the above I.As. filed by the petitioners it could be seen that though he filed the suit in the year 2002, he did not evince proper interest in leading evidence and went on filing one I.A. or the other, on one pretext or the other, without taking definite stand and as rightly found by the court below, the plaintiff is playing hide and seek and is trying to throw stones in dark, which will render no result. Therefore, the attitude of the plaintiff in protracting the litigation cannot be appreciation.

14. Coming to I.A.No.743/2008 it could be noticed that the defendant no.1 was set ex parte on 17.12.2003. Without sufficient cause and proper explanation, the defendant no.1 filed this present I.A. to set aside the ex party order, after a period of about five years. Therefore, the court below rightly dismissed the petition and the same does not warrant interference.

15. In view of the above facts and circumstances and the foregoing reasons, I do not find any merit in all these revisions and they are dismissed. In the circumstances of the case, there shall no order as to costs.

AVS

30—04—2010